Lim Kok Koh & Anor v Lui Seng and another appeal

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS W-02(IM)(NCC)-1830 OF 2011 AND W-02(IM)(NCC)-1955 OF 2011
RAMLY ALI, APANDI ALI AND ANANTHAM KASINATHER JJCA
27 JANUARY 2012

Civil Procedure — Res judicata — Similar issue raised in previous application — Respondent in second application obtained order on prayer on which no order was made when it was part of first application — Whether prayer dismissed when first application heard — Whether court adjourned hearing of prayer in first application to allow parties to resolve issue with liberty to apply failing agreement — Whether res judicata precluded court from granting prayer in second application

The first appellant ('Lim') and the respondent ('Lui') were shareholders in the second respondent ('Cablecon'). Lui wanted to sell his shares in Cablecon to Lim and the latter was agreeable to the same. The parties could not agree on the price for the shares. The deadlock prompted Lui to file a petition to wind up Cablecon. In turn, Lim filed an originating summons ('OS') to 'inter alia' stop Lui from proceeding with the winding up ('the injunction') and to appoint a professional accountant/auditor to determine the market value of Lui's shares ('prayer (3)') as he was still keen to buy the shares. When Lim obtained the injunction, Lui filed a summons ('encl 8') to set it aside. In encl 8 Lui also prayed that if the injunction was not set aside a chartered accountant/registered valuer be appointed to value Cablecon's assets/shares and that Lim be ordered to buy Lui's shares at the price so determined ('prayers 5(c) and (d)'). Lui had also asked that he be appointed the mandatory signatory to Cablecon's bank accounts ('prayer 5(a)'). At the hearing of encl 8, the High Court confirmed the injunction and granted prayers 5 (c) and (d) but made no order on prayer 5(a) to allow the parties to come to an agreement on that issue. They were given liberty to apply if agreement could not be reached. In exercise of that liberty Lui asked for the same prayer as contained in prayer 5(a) in another application he filed ('encl 16') and it was granted by the court. The winding up petition was meanwhile struck off leaving prayer (3) as the only unresolved issue in the OS. Lim filed two appeals to the Court of Appeal against the High Court's decisions. In Appeal No 1830 he contended the High Court was wrong, after having confirmed the injunction on the basis there was a serious question to be tried, to have granted prayers 5(c) and (d) as it "conclusively resolved the OS'. He said the court should have fixed the OS for trial. In Appeal No 1995, Lim submitted that because prayer 5(a) was 'refused' when encl 8 was heard, the judge was barred by res judicata from granting the same prayer in encl 16.

Held, dismissing both appeals with costs:

(1) The orders made by the High Court at the hearing of encl 8 were in

furtherance of prayer (3) of the OS and designed to facilitate the expeditious disposal of prayer (3) as it was the only unresolved prayer in the OS following the striking out of the winding-up petition (see paras 13–14). A

(2) Lim by prayer (3) of the OS and Lui by para 5 of encl 8 both sought the court's intervention to appoint a valuer/accountant to determine the market price of Lui's shares to facilitate the conclusion of the sale and purchase of the shares between the parties (see para 14 (iv)). B

(3) Since the only dispute between the parties was the market price of the shares the fact that the professionals (to value the shares) were appointed pursuant to encl 8 rather than prayer (3) of the OS hardly mattered having regard to the common interest of both parties to complete the transaction through the intervention of the court. There was no evidence to suggest the court intended to deprive Lim from making submissions or filing affidavits to challenge the accuracy or correctness of the valuation by the court-appointed valuers (see para 17). C D

(4) Prayer 5(a) was not dismissed by the judge at the hearing of encl 8. He merely adjourned it to allow parties to resolve the issue by mutual agreement granting them liberty to apply failing agreement. Thus, there was no place for res judicata to apply when the court granted that prayer in encl 16 following the failure of the parties to reach agreement (see paras 18–19). E

[Bahasa Malaysia summary F

Perayu pertama ('Lim') dan responden ('Lui') merupakan pemegang saham-pemegang saham responden kedua ('Cablecon'). Lui mahu menjual saham-sahamnya dalam Cablecon kepada Lim dan Lim turut sama bersetuju. Pihak-pihak tidak bersetuju mengenai harga untuk saham-saham tersebut. Kebuntuan ini mendorong Lui untuk memfailkan petisyen untuk menggulungkan Cablecon. Sebaliknya, Lim memfailkan satu saman pemula ('SP') untuk 'antara lainnya'; menghentikan Lui daripada meneruskan dengan penggulungan ('injunksi') dan untuk melantik seorang akauntan/auditor profesional untuk menentukan nilai pasaran saham-saham Lui ('permohonan (3)') memandangkan dia masih berminat untuk membeli saham-saham tersebut. Apabila Lim telah berjaya mendapatkan injunksi, Lui memfailkan saman ('lampiran 8') untuk mengenepikannya. Di dalam lampiran 8 Lui juga memohon bahawa sekiranya injunksi tersebut tidak diketepikan seorang akauntan bertauliah/penilai berdaftar perlu dilantik untuk menilai aset-aset/saham-saham Cablecon dan bahawa Lim diarahkan untuk membeli saham-saham Lui pada harga yang ditetapkan ('permohonan 5(c) dan (d)'). Lui juga meminta bahawa dia dilantik sebagai penandatangan mandatori untuk akaun bank Cablecon ('permohonan 5(a)'). Pada pendengaran lampiran 8, Mahkamah Tinggi mengesahkan injunksi dan membenarkan permohonan G H I

A 5(c) dan (d) tetapi tidak membuat perintah ke atas permohonan 5(a) untuk membenarkan pihak-pihak untuk mencapai persetujuan mengenai isu tersebut. Mereka diberikan kebebasan untuk memohon sekiranya persetujuan tidak boleh dicapai. Dalam melaksanakan kebebasan tersebut, Lui memohon untuk permohonan yang sama seperti yang terkandung di dalam permohonan
B 5(a) dalam permohonan lain yang difailkan olehnya ('lampiran 16') dan permohonan ini dibenarkan oleh mahkamah. Petisyen penggulungan bagaimanapun dibatalkan, menjadikan permohonan (3) sebagai satu-satunya isu yang tidak diselesaikan dalam SP. Lim memfailkan dua rayuan ke Mahkamah Rayuan terhadap keputusan Mahkamah Tinggi. Dalam Rayuan
C No 1830 dia berhujah bahawa Mahkamah Tinggi telah terkhilaf, selepas mengesahkan injunksi atas alasan bahawa terdapat persoalan serius untuk dibicarakan, untuk membenarkan permohonan 5(c) dan (d) memandangkan ia 'secara muktamad telah menyelesaikan SP'. Dia mengatakan bahawa mahkamah seharusnya menetapkan SP untuk perbicaraan. Dalam Rayuan No
D 1995, Lim berhujah bahawa permohonan 5(a) telah 'ditolak' apabila lampiran 8 didengar, hakim telah dihalang oleh res judicata daripada membenarkan permohonan yang sama dalam lampiran 16.

Diputuskan, menolak kedua-dua rayuan dengan kos:

E (1) Perintah-perintah yang dibuat oleh Mahkamah Tinggi pada pendengaran lampiran 8 merupakan lanjutan daripada permohonan (3) SP dan dibuat untuk memudahkan penyelesaian segera permohonan (3) memandangkan ia merupakan satu-satunya permohonan dalam SP
F berikutan pembatalan petisyen penggulungan (lihat perenggan 13–14).

(2) Lim melalui permohonan (3) SP dan Lui melalui perenggan 5 lampiran 8, kedua-duanya memohon campur tangan mahkamah untuk melantik seorang penilai/akauntan untuk menentukan harga pasaran saham-saham Lui untuk memudahkan keputusan jual dan beli
G saham-saham di antara pihak-pihak (lihat perenggan 14 (iv)).

(3) Memandangkan satu-satunya pertikaian di antara pihak-pihak ialah harga pasaran saham-saham dan fakta bahawa profesional-profesional (untuk menilai saham-saham) telah dilantik menurut lampiran 8
H daripada permohonan (3) SP, ini sama sekali tidak penting dengan mengambil kira kepentingan bersama pihak-pihak untuk menyelesaikan transaksi menerusi campur tangan mahkamah. Tiada bukti untuk mencadangkan bahawa mahkamah berhasrat untuk mengenepikan Lim daripada membuat hujahan-hujahan atau memfailkan afidavit-afidavit
I untuk mencabar ketepatan penilaian oleh penilai-penilai yang dilantik mahkamah (lihat perenggan 17).

(4) Permohonan 5(a) tidak ditolak oleh hakim pada pendengaran lampiran 8. Beliau hanya menundanya bagi membenarkan pihak-pihak menyelesaikan isu tersebut dengan persetujuan bersama dan

memberikan mereka kebebasan untuk memohon sekiranya gagal bersetuju. Oleh itu, res judicata tidak terpakai apabila mahkamah membenarkan bahawa permohonan dalam lampiran 16 berikutan kegagalan pihak-pihak untuk mencapai persetujuan (lihat perenggan 18–19).]

Notes

For a case in similar issues raised in a previous application, see 2(4) *Mallal's Digest* (4th Ed, 2012) para 7265.

Cases referred to

Alor Janggus Soon Seng Trading Sdn Bhd & Ors v Sey Hoe Sdn Bhd & Ors [1995] 1 MLJ 241; [1995] 1 CLJ, SC (refd)

Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd [1995] 3 MLJ 189; [1995] 3 CLJ 783, SC (refd)

Appeal from: Originating Summons No 24 NCC–124 of 2011 (High Court, Kuala Lumpur)

CS Lam (CS Lam & Co) for the appellant.
V Jeya Kumar (Azira Aziz with him) (Kanesalingam & Co) for the respondent.

Anantham Kasinather JCA (delivering judgment of the court):

BACKGROUND FACTS

[1] The first appellant and the respondent are shareholders in the second appellant. The respondent was desirous of selling his shares in the second appellant to the first appellant and the first appellant agreeable to the same. However, the parties were unable to agree on the share price for the shares of the respondent.

[2] The failure to reach agreement on the share price prompted the respondent to file a petition to wind up the second appellant. The filing of the petition caused the first appellant to file Originating Summons No D24-NCC-124 of 2001 (the said 'OS') to, inter alia, restrain the respondent from proceeding with the winding up petition. Over and above the OS, the first appellant also filed an application to set aside the winding up petition. The OS was fixed for hearing before Justice Aziz Abdul Halim whilst the application to set aside the petition was fixed for hearing before Justice Nalini Pathmanathan.

[3] It is pertinent to note that the OS apart from the prayer for the injunction also included the following prayer:

> Satu perintah memerintahkan kesemua Syer Defendan dalam syarikat Calblecon Sdn Bhd (131785-P) diauditkan mengikut harga pasaran semasa oleh satu Pengaudit bertauliah tempatan yang dilantik bersama oleh Plantif dan Defendan dan / atau dilantik oleh Mahkamah Mulia ini ('prayer (3) of the OS')

Although prayer (c) of the OS did not seek an order for the first appellant to purchase the shares of the respondent at the price determined by the court appointed accountant/auditor, in para 12 of the affidavit filed in support of the OS, the first appellant averred to the following effect:

> Saya amat percayai dan berkata di sini bahawa saya mempunyai hasrat positif untuk membeli syer Defendan dalam harga pasaran semasa iaitu harga munasabah yang mengreflek harga betul semasa mengikut asset dan goodwill Plaintiff ke-2 dan diendos oleh akauntan bertauliah; dan bukannya harga yang dipetik dari langit atau sesuka hati dari Defendan yang tidak diendos oleh mana-mana akauntan yang bertauliah.

[4] Following the filing of the OS, the first appellant filed the summons (encl 2) for an ex parte injunction in terms of prayer (b) of the OS. The learned judge granted the ex parte interim injunction restraining the respondent from proceeding with the winding up petition on 3 May 2011. On 12 May 2011, the respondent filed a summons (encl 8) to strike out the ex parte interim injunction and the OS. Enclosure 8 consisted of two separate prayers. The first sought the leave of the court to strike out the interim injunction and the OS. The second prayer premised upon the court allowing encl 2, sought the following reliefs:

> 5. Atau secara alternatif, jika perintah injunksi ex-parte bertarikh 3 Mei 2011 tidak diketepikan, satu perintah bahawa:
>
> a. Defendan yang dinamakan di atas, Lui Seng, sebagai pemilik 38.38% saham dalam Syarikat Plantif Kedua, dijadikan penandatangan wajib kepada kesemua akaun dan / atau fasility bank Syarikat Plaintif Kedua di Hong Leong Bank Berhad yang beralamat di Petaling Jaya Business Centre, Ground Floor, Tower A, PJ City Development, 15A, Jalan 219, Section 51A, 46100 Petaling Jaya dan atau mana-mana akaun Syarikat Plaintif Kedua di mana-mana bank yang lain;
>
> b. Plaintif-Plaintif dan / atau agen-agen dan / atau wakil-wakil dan / atau pekerja-pekerja mereka dihalang daripada menjual dan / atau memindahmilik dan / atau menggadai mana-mana hartatanah milikan Plaintif Kedua termasuk sebarang tanah kosong, bangunan atau rumah tanpa persetujuan secara bertulis Defendan;
>
> c. Seorang juruakaun bertauliah (chartered accountant) dan juga seorang jurunilai berdaftar (registered valuer) dilantik dengan persetujuan oleh Plaintif Pertama dan Defendan untuk membuat

penilaian aset dan saham Syarikat Plaintif Kedua setakat pada tarikh 28 Februari 2011, iaitu tarikh perletakan jawatan Defendan dan

d. Selanjutnya satu perintah bahawa Plaintif Pertama membeli 383,860 saham millikan Defendan pada harga yang dinilai dengan persetujuan oleh juruakaun bertauliah dan jurunilai berdaftar yang dilantik tersebut;

e. Kos permohonan ini ditanggung oleh Plaintif Kedua

Dan / atau untuk perintah yang selanjutnya atau yang lain yang dianggap adil oleh Mahkamah yang Mulia ini (see pp 21–22, BahagianA and B Vol 1)

[5] The first appellant's application to confirm the ex parte injunction (encl 2) and the respondent's application (encl 8) came up for hearing on 14 June 2001. The OS was fixed for mention on the same day. It is significant that during the course of the hearing on 14 June 2011, counsel for the first appellant made the following submission to the learned trial judge:

Plaintiff not asking for academic prayer - 1st Plaintiff willing and ready to purchase shares at price properly audited. In Enclosure 8 Defendant also blowing hot and cold - the Defendant asking the Court to appoint Accountant. *The crux is the price of the shares*. This is triable issue in Enclosure 1

(see p 22, Bahagian A, B and C Vol 1. (Emphasis added.))

[6] The learned trial judge on the conclusion of submissions confirmed the injunction in terms of prayer (2) of encl 2. Additionally, His Lordship granted the reliefs sought by the respondent in terms of prayers (b)–(d) of para 5 of encl 8 (see para 4 of this judgment for the relevant prayers). Presumably to provide the parties with time to reach agreement on the terms of prayer (a) of para 5 and to facilitate the implementation of the order of court of 14 June 2011, His Lordship granted the parties liberty to apply in the event they were unable to reach agreement.

[7] Enclosure 1 was then adjourned for mention to the following day at 2.30pm. The following day His Lordship adjourned encl 1 to 2 August 2010 for case management pending the parties filing affidavits concerning the valuation of the shares (see p 25 of the same volume).

[8] On 7 July 2011, the solicitors for the respondent pursuant to the order of court granting the parties liberty to apply filed a summons (encl 16). The gist of encl 16 was that the first appellant had refused to comply with the order of court of 14 June 2011. The respondent consequently sought various orders to implement the order of court of 14 June 2011 pending the hearing of the OS.

[9] Enclosure 16 came up for hearing on 21 July 2011. By the time encl 16

A came up for hearing, the winding up petition had been struck out by Justice Nalini Pathmanathan. In other words, prayer (2) of the OS had become academic and what was left of the OS was only prayer (3) of the OS. In our opinion, since the orders of court of 14 June 2011 were made in furtherance of prayer (3) of the OS, although pursuant to para 5 of encl 16, it was open to the B first appellant to discontinue the OS and thereby render the orders of 14 June 2011 irrelevant. However, counsel for the first appellant instead applied to stay the order of 14 June 2011.

C **[10]** Since the winding up petition had been struck out, counsel for the respondent naturally abandoned the first prayer in encl 16 relating to the winding up petition and instead sought an order in terms of prayers 2, 3.1 and 3.3 of encl 16. These prayers were primarily designed to maintain the status quo of the second appellant pending the disposal of prayer (3) of the OS. This D is evident from the submissions of both counsel appearing in pp 29–33 of Vol 1 of Bahagian A, B and C. That counsel for the first appellant was still anxious to pursue prayer (3) of the OS is evident from his submission appearing at p 31 of the same volume that his clients' unhappiness was only over the appointment of the valuer. The observation of the learned trial judge on this submission is E that the valuer was appointed after an inter-parties hearing. On the conclusion of submission, the learned trial judge allowed prayers 2, 3.1 and 3.3 of encl 16 but dismissed encl 20. According to the notes of proceedings maintained by His Lordship, encl 20 was dismissed because His Lordship was not satisfied that there were special circumstances to warrant the court granting a stay of its F order of 14 June 2011.

[11] At this juncture, we wish to highlight that two appeals involving the same subject matter were heard by us on the same date. In Appeal No 1830, the complaint of counsel for the first appellant was that the learned trial judge G having allowed encl 2 ought not to have proceeded to make orders based on para 5 of encl 8 on 14 June 2011. The submission being that following the granting of the injunction, the only consequential order that the learned trial judge was entitled to make, was to order the trial of the OS. Appeal No 1955 relates to the orders made by the judge on 21 July 2010. The orders made on H 21 July 2010 arose in this manner. The learned trial judge after allowing prayers (b)–(d) of para 5 of encl 8 on 14 June 2011 adjourned proceedings to 15 June 2010, inter alia, 'for parties to inform court on the arrangement as the operation of the bank account and the appointment of the valuer and an accountant' (see p 24 of Bahagian A, B and C of Vol 1 of the appeal record). I Although counsel appeared before the learned trial judge on 15 June 2011, no further orders were made apart from adjourning the OS for case management to 2 August 2010. On 7 July 2011, the respondent filed an application, inter alia, seeking the appointment of the respondent as a mandatory signatory to the second appellant's bank account to maintain the status quo pending the

disposal of prayer (3) of the OS. Encl 16 was heard and disposed by the learned trial judge on 21 July 2011 and one of the orders made by the judge on that day was to appoint the respondent as a mandatory signatory of the bank account of the second appellant. In Appeal No 1955, counsel for the first appellant contended that the judge had no jurisdiction to grant this prayer primarily because, according to him, this very prayer was included as prayer (a) of para 5 of encl 8 and had been refused by the learned trial judge on 14 June 2011. Counsel cited the case of *Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd* [1995] 3 MLJ 189; [1995] 3 CLJ 783 and contended that the learned trial judge ought to have dismissed this prayer in encl 16 under the doctrine res judicata.

THE GROUNDS OF APPEAL — ENCL 8 — APPEAL NO 1830

[12] (a) The learned trial judge was wrong in granting the alternative prayers sought by the respondent in para 5 of encl 8 after having confirmed the ex parte injunction in terms of encl 2; and

(b) following the granting of the injunction inter parties in terms of encl 2, the learned trial judge's jurisdiction did not extend beyond fixing the OS for hearing.

DECISION OF THE COURT

[13] The thrust of the complaint of counsel for the first appellant on the first ground was that the learned trial judge failed to follow the principles of law outlined in the Supreme Court case *Alor Janggus Soon Seng Trading Sdn Bhd & Ors v Sey Hoe Sdn Bhd & Ors* [1995] 1 MLJ 241; [1995] 1 CLJ ('Alor Janggus'). The principles of law outlined in this case are often cited in our courts as the principles governing the granting of injunctions by our courts. With respect, we have difficulty in comprehending this submission of counsel since the learned trial judge granted the injunction sought by the first appellant in terms of encl 2. The learned trial judge was satisfied that prayer 2 of the OS raised a serious question to be tried and hence the confirmation of the ex parte injunction order. Following the granting of the injunction in terms of prayer 2 of encl 2, the learned trial judge was left only with prayer (3) of the OS (set out in para 3 of this judgment). Incidentally prayer 3 is the only outstanding prayer in the OS since the winding up petition had already been struck out by Justice Nalini Pathmanathan.

[14] The submission of counsel for the first appellant was that upon being satisfied that there was a real issue to be tried, the learned trial judge was obliged

to order the trial of the OS. According to counsel, the orders made by the learned trial judge on 14 June 2011 on prayers 5 of encl 8 effectively amounted to the court conclusively resolving the OS. Counsel further contended that the orders made pursuant to encl 8 were particularly objectionable because encl 8 was a summons whereas the OS represented the originating proceeding. With respect, we beg to differ. In our view, the orders made by the learned trial judge on 14 June 2011 were in furtherance of prayer 3 of the OS and designed to facilitate the expeditious disposal of prayer 3. We opine to this effect for the following reasons:

(a) the OS included in para 3 a prayer for the court to appoint a professional to value the shares of the respondent in the second appellant to determine the market value of these shares. Accordingly, following the confirmation of the injunction order, the learned trial judge granted the orders sought by the respondent in para 5 of encl 8 since:

(i) the first appellant was earnest ('hasrat positif') to purchase the shares of the respondent in the second appellant;

(ii) the respondent was equally bent on selling these shares to the first appellant as evidenced by the prayers in para 5 of encl 8;

(iii) the only issue between the parties concerning the sale of these shares was the proper determination of the market price of these shares (see submission of counsel for the first appellant at p 33 of Vol 1, Bahagian A and B); and

(iv) the first appellant by prayer 3 of the OS and the respondent by para 5 of encl 8 both sought the court's intervention to appoint a valuer and/or an accountant to determine the market price to facilitate the conclusion of the transaction.

[15] Viewed against these background facts, it is abundantly clear that the orders made by the judge on 14 June 2011 were in furtherance of prayer 3 of the OS although made at the hearing of encl 8. The complaint of counsel for the first appellant is that these orders deprived the first appellant of having a trial of the issues in the OS and from leading *viva voce* evidence. With respect, we are unable to agree with this submission because an OS is generally heard and disposed on the basis of affidavit evidence. Secondly, it is evident from the concluding orders made by His Lordship on 14 June 2011 and 15 June 2010 that His Lordship was still proposing to hear prayer 3 of the OS on its merits on completion of case management.

[16] His Lordship's concluding order on 14 June 2011 was to further adjourn the mention of the OS:

> To 15th June 2011 at 2.30 pm for mention Enclosure 1 and for parties to inform Court on the arrangement as to the operation of the bank account and the appointment of the Valuer and Accountant.
>
> (p 35 of Vol 1, Bahagian A and B)

On 15 June 2011, His Lordship's concluding order was that:

> Enclosure 1 for case management on 2nd August 2010 for parties to inform Court as to the status of the valuation and also to file any affidavit in respect of the valuation. The case management is before Timbalan Pendaftar at 9.00am.
>
> (p 36 of Vol 1, Bahagian A and B)

[17] In our judgment, the effect of the aforesaid two concluding orders is that upon the valuation reports being filed with the court by way of affidavits, His Lordship was proposing to make a final order on prayer 3 of the OS. With respect, we are unable to discern any evidence to suggest that His Lordship was intending to deprive counsel for the first appellant of either making submissions after the filing of these affidavits or precluding the first appellant from filing affidavits on behalf of the first appellant challenging the accuracy or correctness of the valuation by the court appointed professional valuers. In our judgment, the interlocutory orders made by the learned trial judge on 14–15 June 2010 were clearly designed to achieve the expeditious disposal of prayer 3 of the OS. As regards ground (b), since the only dispute between both parties was the market price of the shares, in our judgment, the fact that the professionals were appointed by the court pursuant to encl 8 rather than prayer (c) of the OS hardly matters having regard to the common interest of both parties to complete the transaction through the intervention of the court. In any event, in our judgment, any error on the part of the learned trial judge in granting the orders based on para 5 of encl 8 are merely procedural in nature and consequently does not warrant appellate intervention. Accordingly, we dismiss this appeal with costs.

THE GROUNDS OF APPEAL AND DECISION OF THE COURT ON ENCL 16 — APPEAL NO 1955

[18] The thrust of the submission of counsel for the first appellant was that the learned trial judge was precluded by the doctrine of res judicata from appointing the respondent as a mandatory signatory to the bank account of the second appellant pursuant to the order of court of 21 July 2011. With respect, we disagree. It is evident from the learned judges' order of 14 June 2011 that His Lordship did not dismiss prayer (a) of prayer 5 of encl 8. Instead, what His Lordship did was to adjourn prayer (a) of para 5 of encl 8 to be resolved by the parties by mutual agreement and granted them liberty to apply failing agreement. This is evident from the following words:

A To 15.6.2011 at 2.30 pm for mention Enclosure 1 and for parties to inform Court on the arrangement as to the operation of the bank account and the appointment of the Valuer and Accountant.

of His Lordship's order of 14 June 2011.

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[19] We are satisfied that encl 16 was filed by the respondents pursuant to the aforesaid order of the learned trial judge and His Lordship's order that the parties were at liberty to apply. In other words, encl 16 was filed to implement the terms of the order of court of 14 June 2011 since the first appellant had refused to co-operate in enforcing the same. Since the learned trial judge had not refused prayer (a) of para 5 of encl 8, when His Lordship granted prayer 3.1 of encl 16 following the parties failure to reach agreement, there is no place for the doctrine of res judicata to apply on the facts of this case. Accordingly we dismiss this appeal as well.

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[20] Since the memorandum of appeal lodged by the first appellant includes an appeal against the order of the judge on encl 20, we propose to deal with this enclosure briefly. In our judgment, the learned trial judge was right to dismiss encl 20 since the orders made by the judge on 21 July 2011 were intended to maintain the status quo pending the court making a final order on para 3 of the OS. Since it is the intention of the first appellant to purchase the shares of the respondent in the second appellant, clearly it was in the interests of both parties that the status quo be maintained pending the learned trial judge considering para 3 of the OS on the hearing of the OS.

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[21] Appeal Nos 1830 and 1955 of 2011 are accordingly dismissed with costs. The appellants in both appeals to pay lump sum costs of RM15,000 in the aggregate to the respondents. Deposit in both appeals to the respondent towards account of fixed costs.

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Both appeals dismissed with costs.

Reported by Ashok Kumar

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